

RESOURCE MANAGEMENT AGENCY
county of ventura

Weights and Measures
Angela Godwin
Sealer

**NOTICE OF DECISION, ORDER, AND RIGHT
TO APPEAL**

**To: Mr. Phillip Lee
6501 Chagal Drive
Moorpark, CA 93021**

**Environmental Health Division, Ventura County Resource Management Agency
800 South Victoria Ave., Ventura CA 93009**

Re: Decision on Appeal of March 8, 2017 Cease and Desist and Corrective Action Order

On March 8, 2017 the Ventura County Environmental Health Division, acting as designated Local Enforcement Agency ("LEA") under California's solid waste and recycling laws issued a Cease and Desist and Corrective Action Order to Phillip Lee ("Owner"), as owner of property located in vicinity of 6501 Chagall Drive, Moorpark, CA – APN # 503-0-030-320. Mr. Lee appealed this enforcement order and requested a hearing on March 16, 2017.

The undersigned hearing officer presided over the hearing of this appeal on April 17, 2017 at 9:30 a.m. in Room 311 of Hall of Administration Building, 800 S. Victoria Avenue, Ventura, CA. Present for the Owner, were Mr. Lee, his legal counsel, Christina Vanarelli, and Phillip Sherman. Present for the LEA were Charles Genkel, Sean Debley, Peter Bozek, and their counsel, Assistant County Counsel Eric Waltz. The undersigned hearing officer was present along with her counsel, Assistant County Counsel Andrew Gschwind.

Both parties submitted post-hearing briefing on the following two issues: (a) does the undersigned hearing officer have jurisdiction over this matter; and (b) is the broken concrete brought onto the Property by Mr. Lee solid waste within the meaning of California law.

I. Jurisdiction of the Hearing Officer

At the beginning of the hearing, Owner's counsel objected to the appointment and jurisdiction of the hearing officer over this matter. Owner and his representatives pointed out that, as of March 8, 2017, the date of the Order at issue here, the LEA's enforcement program plan provided that LEA orders could be appealed to an independent administrative law judge from the Office of Administrative Hearings. In response, LEA acknowledges that the procedures for appealing one of its orders was recently amended in late March, 2017 to provide that appeals will be heard before a hearing officer appointed by the LEA Director. However, it argues this is not relevant to determining whether the undersigned hearing officer has jurisdiction over this appeal.

The California Integrated Waste Management Act of 1989 ("Act") provides that the governing body of the LEA may appoint a hearing officer to conduct LEA hearings if its governing body has adopted procedures and qualifications for making this appointment. (Pub. Resources Code § 44308, subds. (a) & (d).) The Ventura County Board of Supervisors enacted an ordinance scheme to implement this Act, namely Ventura County Ordinance Code ("VCOC") sections 4700-1 *et seq.* Under this code, a hearing officer may be appointed by the Director of the Environmental Health Division ("EHD"). The hearing officer "may include any employee of the County other than the investigating officer involved in the particular proceeding or such officer's supervisor. (VCOC, § 4701-19.)

Because the undersigned hearing officer was appointed by the Director of the EHD and is not the investigating officer involved in this matter or his superior, my appointment complies with the requirements of the VCOC. Because it appears that the relevant VCOC sections were enacted prior to my appointment on March 31, 2017, it is my determination that I have jurisdiction over the hearing of this appeal. Furthermore, while the undersigned does not purport to be an expert in solid waste handling laws, the undersigned has no financial interest in the subject matter of this dispute and thus determines that she is not disqualified from hearing this dispute

II. Determination Regarding Application of Solid Waste Laws

At the April 17, 2017 hearing both sides agreed that their key facts are not in dispute. Some time in the last year or so, the Owner brought roughly 600-700 cubic yards of mainly broken concrete, with some bricks and other masonry to form a berm on the northwest corner of the property by the "Hunt-Wash Creek" that runs by this area in order to protect his property against flooding during the anticipated heavier-than-normal El Nino rains. The berm was estimated to be approximately 215 feet long and six feet high. Owner acknowledges this material was brought on to his property without permits or consulting local enforcement agencies, and that he is not presently permitted to operate a solid waste disposal or recycling facility.

In his notice of appeal, and in his attorney's opening statement during the hearing, it was represented that the Owner purchased this material to bring onto his property. Owner argues that this material is not "solid waste" under California law because it was never discarded but rather was purchased by him and it has genuine value. Owner cites to the case of *Waste Management of the Desert v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal.4th 478 ("*Waste Management*") in support of his position. At the hearing, Owner stated his desire to grind this material down and use it in his landscaping business – for example, in constructing roads or "English" block walls.

During the hearing LEA staff argued that, regardless of Owner's intentions in bringing this material onto his property and/or whether he paid money for this material, it is nonetheless defined by California law as "solid waste" and thus subject to strict solid waste disposal laws and regulations that Owner has not complied with.

Public Resources Code section 40191(a) defines "solid waste" as "all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition, and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid waste, and other discarded solid and semisolid wastes." Title 14 of the California Code of Regulations defines "'construction and demolition waste' or 'C&D Waste'" as "nonhazardous waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures." 14 CCR § 17388(c).¹

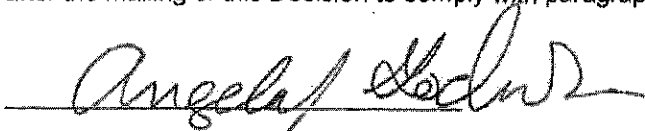
Here there can be no dispute that the broken concrete and other material on the Owner's property are "construction and demolition waste" or "debris," as defined in the California Code of Regulations, as they are building materials resulting from demolition. Although Owner cites to *Waste Management* in support of his argument that the materials on his property are not "waste" because they were never "discarded," the hearing officer believes that Owner's reliance on this case is misplaced. The

¹ 14 CCR § 17381 similarly defines "'Construction and Demolition Debris', or 'C&D Debris'" as "solid waste that is a portion of the waste stream defined as 'construction and demolition wastes,' as defined in Section 17225.15 of Article 4 of this Chapter, and means source separated or separated for reuse solid waste and recyclable materials, including commingled and separated materials, that result from construction work, that are not hazardous, as defined in CCR, Title 22, section 66261.3 et seq., and that contain no more than 1% putrescible wastes by volume calculated on a monthly basis and the putrescible wastes do not constitute a nuisance, as determined by the EA." (*Id.*)

issue in *Waste Management* was whether *recyclable, non-waste materials* were required to be recycled by Waste Management or could be sold to another competing company for recycling. The Court found that owners who contracted with the competing company for collection did not "discard" these recyclable materials, such that they could only be recycled by Waste Management. The issue here is whether construction materials resulting from demolition activity are solid waste or not. The hearing officer believes that this question has already been answered by the California legislature and the CalRecycle regulations cited above. Furthermore, the hearing officer can readily imagine many situations where waste materials could be bought and sold on a black market, such as (to give an extreme example) nuclear waste materials sold to a terrorist organization. Just because a material can conceivably be bought or sold for a variety of purposes does not mean that it is not also waste subject to government regulation.

ORDER:

Owner's appeal is denied and the Cease and Desist and Corrective Action Order upheld for the reasons stated above. Owner shall have until 30 days after the mailing of this Decision to comply with paragraph 3 of the Order, and shall have until 60 days after the mailing of this Decision to comply with paragraph 4 of the Order.

A handwritten signature in cursive script, appearing to read "Angela Godwin", is written over a horizontal line.

ANGELA GODWIN
HEARING OFFICER

DATE: May 15, 2017